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MEMORANDUM

NATIONAL SECURITY COUNCIL

~~SECRET/XGDS~~

ACTION

January 8, 1975

MEMORANDUM FOR: GENERAL SCOWCROFT
FROM: Richard Ober
SUBJECT: Statutory Authority for Intelligence Operations

In his memorandum to you on January 7, 1975 (Tab A), Philip Buchen:

- states the President's intention to write to Department and Agency heads responsible for U.S. intelligence activities related to national security and foreign policy in order to emphasize that such activities must be conducted within the scope of their respective statutory authorities,
- identifies the agencies engaged in such intelligence operations as the following: CIA, DIA, NSA, Army, Navy and Air Force Intelligence (including the National Reconnaissance Office), INR in the State Department, the FBI's Division of Internal Security, U.S. Customs Service under Treasury and AEC (Mr. Buchen notes that it is believed that any AEC intelligence function would now fall to ERDA rather than to NRC, although the Energy Reorganization Act of 1974 does not make this clear),
- points out that except for CIA operations under 50 U.S.C. 403 no specific mention of intelligence operations has been found in enabling statutes for the other agencies cited,
- presumes that other intelligence units are operating under directives from within the Department involved or from the CIA, and
- requests your thoughts on how best to ascertain what documented control standards are now in effect in order to make the President's letter meaningful.

NSS Review
Completed.

~~SECRET/XGDS~~

SECRETCOMMENTS:

Two additional agencies should be queried regarding their intelligence activities related to national security and to the conduct of foreign policy:

- The Drug Enforcement Administration under the Department of Justice
DEA conducts domestic and international investigations of major drug traffickers concentrating efforts at the illicit supply or diversion of drugs. Information derived from such activities on where and how drugs are supplied can affect U.S. foreign policy toward a specific country. For example, U.S. policy toward Turkey has been somewhat affected by Turkey's cancellation of the ban on poppy growing.
- The Immigration and Naturalization Service under the Department of Justice

The Service is charged with protecting the national security of the United States through its enforcement activities, such as the Border Patrol. The Service is also responsible for the deportation of illegal aliens which can have a bearing on the conduct of U.S. foreign policy. For example, the problem of Mexican citizens who continue to illegally enter the United States in great number was treated by President Ford in his October meeting with his Mexican counterpart.

RECOMMENDATION:

That you sign the memorandum to Mr. Buchen (Tab I) which:

- * • suggests that he contact each agency and department directly for information on statutory authority governing intelligence activities,
- recommends that the Drug Enforcement Administration and the Immigration and Naturalization Service be included in the list of agencies involved in intelligence operations related to our national security and to the conduct of foreign policy,
- recommends that queries to the military services be directed to the Departments of Army, Navy and Air Force because each department includes more than one intelligence component, and advises that such a change would avoid a classification problem since the name National Reconnaissance Office is classified secret, and
- advises that the FBI's Division of Internal Security is now called the Intelligence Division.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

SECRET/XGDS

MEMORANDUM FOR: PHILIP BUCHEN

FROM: BRENT SCOWCROFT

I suggest that the best way to get complete and accurate information on the statutory authority governing intelligence activities for each agency and department listed in your memorandum of January 7, 1975 would be to contact each one directly.

The list of agencies and departments involved in intelligence operations related to our national security and to the conduct of foreign policy should be expanded to include the Drug Enforcement Administration and the Immigration and Naturalization Service, both under the Department of Justice. These two organizations sometimes engage in intelligence activities which can affect the conduct of foreign policy.

I would recommend that queries for information on the military services be directed to the Departments of the Army, Navy and Air Force since each department includes more than one intelligence component. By addressing the departments, the classification problem which arises over the mention of National Reconnaissance Office, which is classified secret, can be avoided. In addition, the FBI's Division of Internal Security listed in your memorandum is now called the Intelligence Division.

SECRET/XGDS

NATIONAL SECURITY COUNCIL

January 10, 1974

TO: Bud McFarlane

FROM: Richard Ober ✓

Per General Scowcroft's request, attached is a suggested memorandum for Philip Buchen to send to departments and agencies for information on statutory authority for intelligence operations.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR: The Department of State
Legal Adviser
The Department of Treasury
Office of the General Counsel
The Department of Justice
Office of Legal Counsel
The Central Intelligence Agency
Office of the General Counsel
The Atomic Energy Commission
Office of the General Counsel
The Department of the Army
Office of the General Counsel
The Department of the Navy
Office of the General Counsel
The Department of the Air Force
Office of the General Counsel
The Defense Intelligence Agency
Office of the General Counsel
The National Security Agency
Office of the General Counsel

The President recently stated his intention to ensure that all departments and agencies responsible for intelligence activities related to national security and the conduct of foreign policy carry out such activities within the scope of their respective statutory authorities. As a first step, it is necessary to review the current statutory authority which governs such intelligence activities.

To assist in this review, it is requested that you forward a copy of the specific statute from which your organization or any subordinate organization, bureau, division, service, etc., takes its authority to conduct intelligence activities related to national security and the conduct of foreign policy. If there is no specific statute, provide a concise statement of the departmental guidelines or policy directives under which such activities are carried out.

In addition, include a brief interpretive statement on the range and limitations which the statute or other guidance places on your organization.

In view of the President's interest in this subject, I ask that you comply with this request as soon as possible.

Philip W. Buchen
Counsel to the President

THE WHITE HOUSE
WASHINGTON

January 7, 1975

MEMORANDUM FOR: General Scowcroft

FROM:

Philip Buchen *P.W.B.*

The President in his statement on January 4, 1975, said in part:

"I am writing to all Department and Agency heads, who are responsible for the overall intelligence activities of the United States as related to our national security and to the conduct of our foreign policy, for the purpose of emphasizing that they are at all times to conduct their activities within the scope of their respective statutory authorities."

In order to prepare a draft of such communication, I asked my office to identify and find the statutory authority for Departments and Agencies engaged in intelligence operations of the type mentioned. The following units have been identified:

1. Central Intelligence Agency
2. Defense Intelligence Agency
3. National Security Agency
4. Army Intelligence
5. Navy Intelligence
6. Air Force Intelligence (including the National Reconnaissance Office)
7. Department of State (Bureau of Intelligence and Research)
8. Federal Bureau of Investigation (Division of Internal Security)
9. Treasury Department, U.S. Customs Service
10. Atomic Energy Commission 1/

1/ The AEC was divided into an Energy Research and Development Administration and a Nuclear Regulatory Commission by the Energy Reorganization Act of 1974. It is believed that any intelligence function of the AEC would logically be given to ERDA, although, the statute does not make this clear.

-2-

Except for the Central Intelligence Agency operations under 50 U.S.C. 403, no specific mention of intelligence operations has been found in an enabling statute for any of the other units. NSA was created by a Presidential directive in 1952, and DIA by DOD directive 5105.21 dated August 1, 1961, but we can locate no copies of these directives in the White House records. Presumably the other intelligence units are operating under other directives, either issued from within the Department involved or from CIA as coordinator of all intelligence operations, but we have no compilation of these directives.

In order to prepare a meaningful communication for the President to send, I would like your thoughts on how best to learn, in an orderly and expeditious way, what documented standards are now in effect which are supposed to be controlling on each unit to be addressed. We may, of course, learn that in some cases the documented standards are so vague as to be of no consequence.

cc: John Marsh
Don Rumsfeld

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR:

~~The Department of State~~

~~Legal Adviser~~

~~The Department of Treasury~~

~~Office of the General Counsel~~

~~The Department of Justice~~

~~Office of Legal Counsel~~

~~The Central Intelligence Agency~~

~~Office of the General Counsel~~

~~The Atomic Energy Commission~~

~~Office of the General Counsel~~

~~The Department of the Army~~

~~Office of the General Counsel~~

~~The Department of the Navy~~

~~Office of the General Counsel~~

~~The Department of the Air Force~~

~~Office of the General Counsel~~

~~The Defense Intelligence Agency~~

~~Office of the General Counsel~~

~~The National Security Agency~~

~~Office of the General Counsel~~

The Deputy Secretary of State



Secretary of Defense

Sec Def

The President ~~recently stated his intention~~ ^{*in his*} to ensure that all departments and agencies responsible for intelligence activities related to national security and the conduct of foreign policy carry out such activities within the scope of their respective statutory authorities. As a first step, it is necessary to review the current statutory authority ^{*is*} which governs such intelligence activities.

To assist in this review, ^{*you are*} it is requested ^{*to*} that you forward a copy of the specific statute from which your organization or any subordinate organization, bureau, division, service, etc., ^{*takes*} its authority to conduct intelligence activities related to national security and the conduct of foreign policy. If there is no specific statute, provide a concise statement of the departmental guidelines or policy directives under which such activities are carried out.

In any way

all specific authorities under which operations in conducting

This statement should DESCRIPTION OF ~~STATE~~
~~In addition, include a brief interpretive statement on the range and limitations~~
which the statute or other guidance places on your organization.

~~In view of the President's interest in this subject, ask that you comply~~
~~with this request as soon as possible.~~ YOU ARE REQUESTED

TO SUBMIT THIS MATERIAL NOT LATER THAN JANUARY 25, 1975.

Philip W. Buchen
Counsel to the President

HAK

~~As soon as possible.~~

as quickly as possible and in any event

*you should, in addition include a brief
description of the manner in which the specific activities
are interpreted in the sense of providing scope
and limitation to such activities.*

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MEMORANDUM

NATIONAL SECURITY COUNCIL

MEMORANDUM FOR:

The Secretary of Treasury
The Secretary of Defense
The Attorney General
The Deputy Secretary of State
The Director Central Intelligence Agency
The Chairman Atomic Energy Commission

The President wishes to ensure that all departments and agencies responsible for intelligence activities related to national security and the conduct of foreign policy carry out such activities within the scope of their respective statutory authorities. As a first step, it is necessary to review the current statutory authorities governing such intelligence activities.

To assist in this review, you are requested to forward a copy of all ^{on statutory authority} ~~authorities~~ under which your organization or any subordinate bureau, division, service, etc., operates in ^{conducting} ~~coordinating~~ intelligence activities related in any way to national security or the conduct of foreign policy.

You should, in addition, include a brief description of the manner in which the specific authorities are interpreted, in the sense of providing scope and limitation to such activities.

You are requested to submit this material as quickly as possible and in any event not later than January 25, 1975.

Henry A. Kissinger